

1 LUZ ELVIA BHULLAR#16252-097  
2 FCI Dublin  
3 Federal Correctional Institution  
4 5701 8<sup>th</sup> Street – Camp Parks  
5 Dublin, CA 94568

**FILED**

JUL 31 2007

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

E-filing

6 IN THE UNITED STATES DISTRICT COURT  
7 FOR THE NORTHERN DISTRICT OF CALIFORNIA

8 SAN FRANCISCO - ~~OAKLAND~~ DIVISION

9  
10 LUZ ELVIA BHULLAR,

11 Petitioner,

12 vs.

13 SCHELIA A. CLARK, Warden, Federal  
14 Corrections Institution - Dublin,

15 Respondent.

C. 07

3937

PETITION FOR WRIT OF HABEAS  
CORPUS UNDER 28 U.S.C. § 2241

SBA

(PR)

17 PETITIONER, LUZ ELVIA BHULLAR, seeks relief from the execution of her sentence,  
18 pursuant to 28 U.S.C. § 2241, on the grounds that she is in the custody of the Bureau of Prisons  
19 ("BOP") under circumstances in which BOP by regulation refuses to exercise its discretion to  
20 allow her the "full benefit" of six months of pre-release placement at a Community Corrections  
21 Center ("CCC") in violation of federal law. Due to the unlawful execution of Petitioner's  
22 sentence, Petitioner seeks this Court to grant said petition and to order BOP to exercise its  
23 discretion to place Petitioner in a CCC for six months as permitted by federal law. The petition  
24 herein supports such relief as set forth more fully below:

25 **1. Custody**

26 Petitioner is in the custody of the BOP serving her 30-month federal sentence at  
27 Federal Correctional Institution ("FCI") Dublin, in Dublin, California, with a projected  
28 release date of April 3, 2008.

1       **2. Reason for Custody**

2           Petitioner is in BOP custody pursuant to a conviction for Sale of citizenship  
3 documents – 18 U.S.C. 1427, Aggravated I.d. Theft - 18 U.S.C. 1028A (a)(1) and Sale  
4 of SSN Card - 18 U.S.C. 408 (a)(7)(c) after a guilty plea on September 28, 2006. She  
5 was sentenced to 30-months imprisonment on October 18, 2006, by the Honorable  
6 David F. Levi, Eastern District Court Judge.

7       **3. Execution of Sentence in Violation of Federal Law**

8           In the event Petitioner is not granted a transfer to a half way house within six-months of  
9 her release date from federal prison, her continued custody would be in violation of federal law.  
10 By regulation, BOP does not grant more than 10 percent of an overall term of imprisonment  
11 under its prerelease program in a CCC, even though federal law allows BOP to designate federal  
12 inmates to a CCC facilities for a period of six months. *See* Attachment A 28 CFR § 570.21. Due  
13 to BOP regulations, Petitioner will receive just 90 days of prerelease placement in a CCC  
14 because of the BOP 10-percent rule.

15       **4. Subject Matter Jurisdiction**

16           This Court has jurisdiction pursuant to 28 U.S.C. § 2241. When an inmate challenges the  
17 manner the BOB executes a sentence, she must bring this request before a federal district court  
18 with jurisdiction over the custodian, since § 2241 acts upon the person who is holding the  
19 individual in allegedly unlawful custody. *See* 28 U.S.C. § 2241; *Braden v. 30th Judicial Cir. Ct.*  
20 *Of Kent.*, 410 U.S. 484, 494-95 (1973).

21       **5. Exhaustion of Administrative Remedies**

22           Petitioner is in the process of exhausting her administrative remedies through the BOP's  
23 administrative appeals process. Exhaustion of administrative remedies is not; however, a  
24 statutory or jurisdictional requirement for habeas relief under 28 U.S.C. § 2241. *Rivera v.*  
25 *Ashcroft*, 394 F.3d 1129, 1139 (9th Cir. 2005). A failure to exhaust administrative remedies  
26 does not deprive the Court of jurisdiction over a § 2241 petition. *Id.* When a § 2241 petitioner  
27 fails to exhaust administrative remedies, the district court must decide whether to excuse the  
28 failure to exhaust and reach the merits or to require exhaustion. *Id.*; *see Arreola-Arreola v.*

1 *Ashcroft*, 383 F.3d 956, 965 n.10 (9th Cir. 2004) (exhaustion maybe waived). If Petitioner  
2 prevails in this petition, she would be entitled to be transferred to a CCC as soon as October 4,  
3 2007.

4 Given the short span of time left on her sentence, and the fact that the BOP would need  
5 time to exercise its discretion if the Court granted Petitioner the relief she seeks, she asks the  
6 Court to waive any failure to exhaust and reach the merits of her claim. Moreover, the Court  
7 may excuse a failure to exhaust administrative remedies and reach the merits of a § 2241  
8 petition when exhaustion would be futile. *See, e.g., Laing v. Ashcroft*, 370 F.3d 994, 1000-01  
9 (9th Cir. 2004). Exhaustion of administrative remedies would be futile here because the BOP  
10 likely would reject Petitioner's appeal based on its official policy that she is challenging. For  
11 these reasons, the Court should reach the merits of this petition.

## 12 **6. Argument**

13 The BOP policy at issue is at odds with its authority under federal law giving BOP  
14 discretion to grant up to six months in a CCC for any federal inmate sentenced by a federal  
15 district court. The policy strips BOP of any discretion to consider the full six-month benefit of  
16 prerelease, even though federal law allows for such discretion. Under the relevant federal  
17 statutes, BOP has authority to designate an inmate to any place of imprisonment. 18 U.S.C. §  
18 3621(b). That statute reads as follows:

19 (b) Place of Imprisonment. -- The Bureau of Prisons shall  
20 designate the place of the prisoner's imprisonment. The Bureau  
21 may designate any available penal or correctional facility that  
22 meets minimum standards of health and habitability established by  
23 the Bureau, whether maintained by the Federal Government or  
24 otherwise and whether within or without the judicial district in  
25 which the person was convicted, that the Bureau determines to be  
26 appropriate and suitable, considering - (1) the resources of the  
27 facility contemplated; (2) the nature and circumstances of the  
28 offense; (3) the history and characteristics of the prisoner; (4) any  
statement by the court that imposed the sentence - (A) concerning  
the purpose for which the sentence to imprisonment was  
determined to be warranted; or (B) recommending a type of penal  
or correctional facility as appropriate; and (5) any pertinent policy  
statement issued by the Sentencing Commission pursuant to  
section 994(a) of title 28. 18 U.S.C. § 3621(b).

1 In designating the place of imprisonment or making transfers under this section, there shall  
 2 be no favoritism given to prisoners of high social or economic status. The Bureau may at any  
 3 time, having regard for the same matters, direct the transfer of a prisoner from one penal or  
 4 correctional facility to another. 18 U.S.C. § 3621. This statute permits the designation of  
 5 inmates to a CCC at any point during an inmate's term of imprisonment. *Flood v. Jeter*, 386  
 6 F.3d 841, 846-47 (8th Cir. 2004) (BOP has authority to transfer an inmate to a CCC at any time  
 7 during service of inmate's sentence); *Goldings v. Winn*, 383 F.3d 17, 23-27 (1st Cir. 2004)  
 8 (same).

9 18 U.S.C. § 3624(c) reads in pertinent part: -- The Bureau of Prisons shall, to the extent  
 10 practicable, assure that a prisoner serving a term of imprisonment spends a reasonable part, not  
 11 to exceed six months, of the last 10 per centum of the term to be served under conditions that  
 12 will afford the prisoner a reasonable opportunity to adjust to and prepare for the prisoner's re-  
 13 entry into the community. The authority provided by this subsection may be used to place a  
 14 prisoner in home confinement. The United States Probation System shall, to the extent  
 15 practicable, offer assistance to prisoner during such pre-release custody. 18 U.S.C. 3624(e).

16 BOP's policy of limiting pre-release to only 10 percent of an inmate's term vitiates the  
 17 discretion given to BOP by statute to designate or transfer an inmate to a CCC at any time during  
 18 the inmate's prison term in violation of federal law.

19 Two significant reported district court cases have addressed this identical issues and  
 20 ordered BOP to exercise its discretion in the manner requested here. *United States v. Paige*, 369  
 21 F. Supp. 2d 1257 (D. Mont. 2005); *Pimentel v. Gonzales*, 367 F. Supp. 2d 365 (E.D.N.Y. 2005).  
 22 Both cases have granted relief by entering an order requiring BOP to exercise of its full  
 23 authority and to consider designating the petitioners to a CCC without regard to any policy BOP  
 24 may have limiting such pre-release placement. *Paige*, 369 F. Supp. 2d at 1263; *Pimentel*, 367 F.  
 25 Supp. 2d at 376. In addition, all four circuits that *have* addressed the validity of the BOP policy at  
 26 issue here, 28 C.F.R. § 570.21, have found it invalid. *Wedelstedt v. Wiley*, 477 F.3d 1160 (10th  
 27 Cir. 2007); *Levine v. Apker*, 455 F.3d 71 (2d Cir. 2006); *Fults v. Sanders*, 442 F.3d 1088, 1092  
 28 (8th Cir. 2006); *Woodall v. Fed. Bureau of Prisons*, 432 F.3d 235 (3d Cir. 2005).

1 Here, as in these cases, Petitioner asks the Court to give her the full benefit of consideration  
2 for a pre-release placement of six months, as provided for by statute.

3 **7. Prayer for Relief**

4 Wherefore, Petitioner prays that the Court issue the writ or issue an order directing the  
5 Respondent to show cause why the writ should not be granted with such return be made with  
6 three days from the order to show cause, not to exceed 20 days by extension for good cause. 28  
7 U.S.C. § 2243. Petitioner further *prays* that this petition be granted and that the Court order  
8 BOP, "in good faith, to consider the appropriateness of transferring the petitioner to a  
9 community confinement center in light of the factors set forth in Section 3621(b) and any  
10 individual factors deemed appropriate by the BOP, without reference to the BOP policy  
11 promulgated in December 2002 and without reference to 28 C.F.R. § 570.21." *Pimentel*, 367 F.  
12 Supp. 2d at 376. It is further requested that the Court order BOP "to make this determination  
13 promptly, and, in no event, later than ten (10) days from the date of the order. *Id*

14 Further, Petitioner requests appointment of counsel under the Criminal Justice Act to  
15 represent her in this matter.

16 Dated: July , 2007

Respectfully submitted,

17  
18  
19 By.

  
LUZ ELVIA BHULLAR

7-27-07

DUB00  
PAGE 001

## PROGRAM REVIEW REPORT

12-05-2006  
06:03:27

INSTITUTION: DUB DUBLIN FCI

NAME.....: BHULLAR, LUZ ELVIA  
RESIDENCE...: SACRAMENTO, CA 95670

REG. NO: 16252-097

TYPE OF REVIEW.....: INITIAL CLASSIFICATION ~~PROGRAM REVIEW~~  
NEXT REVIEW DATE.....: 3-5-07PROJ. RELEASE DATE...: 04-03-2008  
PAROLE HEARING DATE..: NONERELEASE METHOD.: GCT REL  
HEARING TYPE....: NONEDATE OF NEXT CUSTODY REVIEW: 3-5-07 DETAINERS (Y/N): NCIM STATUS (Y/N).....: N IF YES, RECONCILED (Y/N): N/APENDING CHARGES.....: NONE KNOWNOFFENDER IS SUBJECT TO NOTIFICATION UNDER 18 U.S.C. 4042(B) (Y/N).....: NO  
IF YES - CIRCLE ONE - ~~DRUG TRAFFICKING/CURRENT VIOLENCE/PAST VIOLENCE~~

| CATEGORY | CURRENT ASSIGNMENT | EFF DATE                       | TIME            |
|----------|--------------------|--------------------------------|-----------------|
| CUS      | OUT                | OUT CUSTODY                    | 11-01-2006 1039 |
| EDI      | ESL HAS            | ENGLISH PROFICIENT             | 11-30-2006 1500 |
| EDI      | GED UNK            | GED STATUS UNKNOWN             | 11-09-2006 1245 |
| FRP      | UNASSG             | FINANC RESP-UNASSIGNED         | 10-25-2006 0829 |
| LEV      | MINIMUM            | SECURITY CLASSIFICAT'N MINIMUM | 10-25-2006 0842 |
| MDS      | NOT MED CL         | NOT MEDICALLY CLEARED          | 11-09-2006 1303 |
| QTR      | S06-073L           | HOUSE S/RANGE 06/BED 073L      | 11-09-2006 1906 |
| RLG      | UNKNOWN            | RELIGION UNKNOWN               | 10-25-2006 0829 |
| WRK      | C-UNASSG           | CAMP UNASSG                    | 12-01-2006 0001 |

WORK PERFORMANCE RATING: N/AINCIDENT REPORTS SINCE LAST PROGRAM REVIEW: NONEFRP PLAN/PROGRESS: TRUST FUND DEPOSITS PAST 6 MO: \$ 450FRP PAYMENTS PAST 6 MO: \$ 0 OBLG BALANCE: \$ 300CURRENT FRP PLAN: \$ 0 PAYMENTS COMMENSURATE: YES / NO ✓IF NO, NEW PAYMENT PLAN: BEGIN \$25/00RELEASE PREPARATION PARTICIPATION: TAKE 1 CLASS FROM  
EACH OF 6 SECTIONS BEFORE RELEASE 4-3-08.  
COMPLETE 2 SECTIONS OF CHOICE BY 3-5-07



LUZ BHULLAR 16252-097  
FEDERAL PRISON CAMP  
5675 8th STREET-CAMP PARKS  
DUBLIN, CALIFORNIA 94568



UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
PHILIP E. BURTON COUTHOUSE AND FEDERAL BLDG.  
450 GOLDEN GATE AVENUE  
SAN FRANCISCO, CALIFORNIA 94102

RECEIVED

JUL 30 2007

RICHARD W. WICKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

A handwritten signature, likely of Richard W. Wicking, in dark ink.